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EXTERNAL AFFAIRS DIVISION



July 1, 2005

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VIA FEDERAL EXPRESS & EMAIL

The Honorable Richard E. Greene
Regional Administrator, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

6RA.....✓	6EN.....
6DRA.....✓	6WG.....
6MD.....	6SF.....
6OEJ.....	6RC.....
6PD.....	6XA.....✓

RE: Gulfco Marine Maintenance, Inc. (Gulfco) Site in Freeport, Texas

Dear Mayor Greene:

On behalf of The Dow Chemical Company, Sequa Corporation, and LDL Coastal ("Gulfco Parties"), thank you again for the flexibility displayed in your March decision to return the Gulfco Site to the Texas Voluntary Cleanup Program (VCP) as requested by Governor Perry. As we described in that meeting, the parties strongly believe that this innovative approach, if successful, would have resulted in a better product (a more marketable property) in a shorter period of time. This approach was sound from both a legal and policy perspective.

Unfortunately, we must now report that the return of the Gulfco Site to the Texas VCP does not appear probable for the investigation phase of the project, and the Gulfco Parties see no other choice but to focus on the execution of the Unilateral Administrative Order (UAO) issued by the Division Director. The effective date of the UAO is July 15, 2005. Unless you see another alternative, the Gulfco Parties intend to conduct the site investigation under the UAO, working cooperatively with EPA. We regret that the "win-win" solution you advanced in March has failed and with its failure both EPA and the parties have lost. There will be, however, one more opportunity to achieve at least one aspect of the goal we originally set—a more marketable property. While the investigation phase will be longer and more costly under the Superfund UAO, the selection and completion of a remedy remains a separate step in the process, as the UAO does not encompass the remedy phase. If you are unable to return the Gulfco Site to the Texas VCP at this time, we ask that you consider working with us and the state to ensure that, following the investigation phase, the site is referred to the TCEQ for selection and performance of the remedy under the VCP, as Governor Perry originally requested.

The remainder of this letter describes the reasons the effort at this stage was not successful. We believe this background is essential if the Agency is to succeed in similar initiatives in the future. Further, we recently received a letter from Mr. Coleman

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The Honorable Richard E. Greene
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dated June 22. The letter contained a number of significant misstatements regarding the history of our negotiations. The record of these discussions should be recounted correctly for your understanding.

As explained in the March meeting, starting in late 2004, the parties recognized the uniqueness of this site and troubling questions concerning the state referral for NPL listing. Accordingly, the Gulfco Parties began working to get EPA to consider an innovative approach to the cleanup of the Gulfco site intended to promote its return to productive use in the shortest possible time. From November 2004 through February 2005, the Region rejected various ideas presented by the parties, including the possibility of sending this site back to the State of Texas. Prior to your involvement, your Division Director and his staff refused to discuss any alternatives to the lengthy and costly Superfund approach.

In early March, Governor Perry, recognizing the issues associated with the state referral, asked EPA and TCEQ to work together to return the site to the state for action under the VCP. A copy of the Governor's letter is attached for your convenience. In our meeting on March 7, you decided on an approach that would respond to Governor Perry's request and result in the site being cleaned up under the VCP. You made specific assignments to your staff and the Gulfco Parties in the meeting. Developments since our meeting have been disappointing and frustrating and have made return of the site to the state at this stage, improbable, if not impossible.

While the Gulfco Parties promptly prepared an outline of terms for an agreed order consistent with your directive, the Division Director took a different approach-- he issued a letter only four days following our meeting which was totally inconsistent with your decision. He even contended that the Gulfco Parties had acknowledged that the path you had chosen would not work. A copy of this March 11, 2005 letter is attached for your review. On March 24, 2005, the Division Director issued another letter that we believe misstated your position regarding the use of the VCP. A copy of this letter is also attached. Thus, March was wasted as we endeavored to get your staff to acknowledge your decision. Your staff has never responded to the outline of the agreed order we submitted at your direction.

Finally, on April 1 in a meeting with Larry Starfield, the staff seemed to agree to the path that both you and the Governor had asked us to follow -- referral of the site to the state VCP. This too proved illusory. In that meeting, we agreed to work on two parallel tracks -- a technical track involving the development of a statement of work and a legal track involving the development of the Administrative Order on Consent.

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STATEMENT OF WORK (SOW)

The Gulfco Parties took responsibility for the SOW, prepared the draft SOW and have been attempting in good faith to reach agreement on the technical terms. We have been disappointed by your staff's response to our efforts. We have been chastised for rocking the boat by first asking for the state transfer and for insisting on a risk based/step wise approach to assessment of the site based upon the data gathered during the investigation. The staff has rejected this sound, focused technical approach in favor of a "shotgun" approach. Rather than attempting to answer the question, does this site pose a risk, the staff insists on answering a very different question- are there any risks in the area. This approach, which is inconsistent with EPA's published guidance and turns 25 years of Superfund risk science on its head, will no doubt confound the real question of what should be done at this site. Science is not driving the work scope. Despite the Division Director's emphasis in our April 1 meeting that the SOW be statistically-based, technical staff insisted on a soil sampling program based on an arbitrary grid spacing and rejected a proposed program that calculated the number of samples needed from existing data (collected under EPA direction) in accordance with EPA statistical guidance. Similarly, despite the Division Director's request in the April 1 meeting that the groundwater investigation program consist of potential source area and Site perimeter-based sample locations, technical staff rejected our proposed step wise, perimeter-based program and requested an arbitrary grid-based program.

ADMINISTRATIVE ORDER ON CONSENT (AOC)

On April 1 we again volunteered to prepare a draft AOC. Your staff rejected the offer and took responsibility for this task. Again, we called their attention to the outline we had submitted by March 11. Your staff then disregarded our agreement to work on a parallel track with us to develop both the SOW and the AOC. Finally, on June 17, three months after our meeting with you and delivery of our outline, we received a draft AOC. Unfortunately, it was wholly inconsistent with the approach you directed. The draft failed to address any of the issues relating to the referral of the site to the VCP. Earlier we had been told that the staff didn't want to waste their time on the AOC. While failing to spend time on an AOC, your staff found time to prepare and issue a Unilateral Administrative Order (UAO) which would return the site to the lengthy and expensive Superfund Process – the process your Division Director has pushed for all along. This UAO was issued May 23, 2005. We learned of its issuance on June 6 while we were preparing to meet in what we thought were ongoing good faith negotiations on the SOW.



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While your Division Director assured us that the UAO was simply intended to set a firm deadline and was not intended to affect ongoing negotiations on the SOW and use of the VCP, your staff disavowed this strategy, and stated categorically that technical issues would only be discussed in the context of the UAO and RI/FS under Superfund, and not in the context of a possible referral to the VCP. Issuance of the UAO effectively terminated the negotiations. This was confirmed in a recent conference call when your Division Director repeatedly refused to respond to requests for a commitment to meaningful negotiations. Instead he returned to his position that EPA would not talk about referring the site to the VCP. From their actions since March, it is clear to us that your staff clearly believes that the innovative approach that Governor Perry requested and you directed is not to be pursued. The Gulfco Parties are left to wonder how to communicate with an agency pursuing conflicting agendas.

From our perspective, this entire effort has been an enormous waste of time and money designed to provide the appearance of working toward the Governor's request while all the time intending to carry out the original enforcement first approach. The actions taken by staff are also entirely inconsistent with your "300 Day Plan", which promotes the following principles of "a better way": Reward results, not programs; Collaboration, not polarization; Lead with science and technology; Solutions transcend political boundaries; Science for facts, process for priorities; Consider benefits and costs; Make land available for reuse at contaminated sites; Protect America with innovative approaches to environmental problem solving; and Champion common-sense approaches and emerging technologies to solve environmental challenges, to name a few.

Unless you see another opportunity to revive a constructive dialogue, we believe the most expedient approach at this point is to simply accede to Mr. Coleman's unilateral order and conduct the investigation pursuant to that order. While not in line with your decision or the Governor's request, we see no other options.

In closing, we repeat our regret that the "win-win" solution you advanced in March has failed. The Gulfco group will work cooperatively with EPA to execute the EPA Unilateral Order. If you see a way to resolve the current impasse, please let us know immediately. We are, of course, available to meet with you and Mr. Starfield to discuss the reasons this effort failed and any prospect for salvaging the initiative that you can identify. Finally, we urge the Region to consider working with us and the state to ensure that, following the investigation phase, the site is referred to the TCEQ for selection and performance of the remedy under the VCP.

The Honorable Richard E. Greene
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U.S. Environmental Protection Agency
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With best regards, I am

Very truly yours,

F. William Mahley / vss

F. William Mahley

FWM/ksb

cc: ***All via Federal Express and Email***

The Honorable Rick Perry
Office of the Governor
P. O. Box 12428
Austin, Texas 78711-2428

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OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

March 1, 2005

The Honorable Richard E. Greene
Regional Administrator, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

RE: Gulfco Marine Maintenance Site in Freeport, Brazoria County, Texas

Dear Mayor Greene:

In December 2001, I referred the Gulfco Marine Maintenance Site in Freeport, Texas, to EPA for listing on the National Priorities List ("NPL"). It has come to my attention that, due to unusual circumstances, the present owner of this site was not afforded adequate notice of the imminent NPL listing nor was the present owner afforded a sufficient opportunity to address the site through the Texas Commission on Environmental Quality's (TCEQ) Voluntary Cleanup Program ("VCP").

This property has significant potential for redevelopment, and the interested parties are committed to cleaning up the site immediately. Remediation through the VCP will allow faster cleanup by parties and, importantly, will afford liability protection to a future buyer when a VCP certificate of completion is obtained. The environmental, economic, and social benefits to the local area all weigh in favor of this approach.

In light of these circumstances, I respectfully request your concurrence to allow this site to be addressed pursuant to TCEQ's VCP. I am convinced this is the best course of action for this site, and TCEQ is amenable to this proposal. I further request that Region 6 work cooperatively with TCEQ to facilitate the site's entry into the VCP and subsequent referral to EPA for delisting from the NPL once the site's remediation is completed and no further action is required.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry".

Rick Perry
Governor

RP:zcp

cc: Ms. Kathleen Hartnett White, Chairwoman, Texas Commission on Environmental Quality
Mr. Glenn Shankle, Executive Director, Texas Commission on Environmental Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAR 11 2005

James C. Morriss III
Thompson & Knight LLP
1900 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4081

RE: Gulfco Marine Maintenance Superfund Site in Freeport Texas

Dear Mr. Morriss:

Thank you for your letter of March 4, 2005, concerning the Gulfco Marine Maintenance Superfund Site (Gulfco Site). The Environmental Protection Agency (EPA) appreciates your efforts to work towards our mutual goal of quickly cleaning up the Gulfco Site in order to delete the site from the National Priorities List (NPL).

As you know, EPA, as well as your group consisting of Dow, Sequa, and LDL Coastal (hereinafter referred to as "Potentially Responsible Parties [PRP] Group"), has been exploring ways in which to meet the goal of quick cleanup of the Gulfco Site in order to delete it from the NPL. EPA initially proposed that the Gulfco Site be investigated in a Remedial Investigation and Feasibility Study (RI/FS) and be cleaned up under a Remedial Action. As a PRP Group that takes your obligations seriously, you committed to do the RI/FS in an Administrative Order on Consent (AOC). EPA and the PRP Group worked diligently for seven months to reach an AOC to conduct the RI/FS portion of the cleanup.

As the negotiations were wrapping up, the PRP Group, in a February 23, 2005, letter proposed exploring a two-year cleanup of the Gulfco Site under the Texas Voluntary Cleanup Program (Texas VCP) in order to meet our mutual goal of quick cleanup. EPA fully supports the Texas VCP and believes that this program is an excellent approach under appropriate circumstances. EPA's Memorandum of Understanding (MOU) with the Texas Commission on Environmental Quality on the Texas VCP was negotiated under the premise of not using the Texas VCP for NPL Sites. An assessment of the appropriate nature of the VCP for use at NPL Sites has not been completed. This assessment is currently being considered as a result of Governor Perry's request. However, it will take a considerable amount of time to carefully evaluate and the possibility of adopting a new policy regarding NPL Sites and the Texas VCP.

Assessing the appropriate nature of the Texas VCP for use at NPL sites is a lengthy process. This, combined with your proposal's lack of detail about how a cleanup under the VCP would provide information sufficient to delete the Gulfco Site from the NPL, caused EPA to notify you in a February 28, 2005 letter via e-mail that EPA was willing to explore cleanup under appropriate State laws, but through an AOC with EPA so that the requirements for deletion from the NPL are met. In order to begin exploring this idea, EPA invited you to commit to an AOC process which would outline the investigation and cleanup of the Gulfco Site in a manner which will allow EPA to delete the Gulfco Site from the NPL.


The EPA was disappointed to learn in your March 4, 2005, letter, that you are declining to explore the AOC option to do cleanup of the Gulfco Site under federal and appropriate state law. An AOC between EPA and the PRPs assures that adequate information is collected to facilitate deletion as well as that appropriate response actions are completed. EPA is flexible as to the content of an order and scope of work assuming the cleanup is completed under federal and appropriate State law.

The EPA met with the PRP Group on March 7, 2005 in the Regional Office to discuss resolution of the impasse on the mechanism to most quickly clean up the Gulfco Site. At the meeting, the Regional Administrator reiterated some of the timing problems regarding the Texas VCP approach. EPA was pleased that the PRP Group understood the inability of meeting our mutual goal of timely cleanup under the Texas VCP process and agreed orally to exploring the AOC option with EPA in order to clean up the Gulfco Site. EPA requested that the PRP Group provide an outline of an investigation and cleanup that would take into account EPA's oversight role, public participation, assurance that all appropriate response actions are completed, and that is consistent with other NPL actions. EPA would like to see this issue resolved as soon as possible. Additional discussions to resolve this matter should be completed on an expedited basis.

In order to meet our mutual goal of quickly cleaning up the Gulfco Site in order to delete the site from NPL, the PRP Group can still sign the RI/FS AOC allowing for completion of the investigation in less than six months and the entire cleanup in eighteen months. This is quicker than amending the VCP program or drafting a new AOC for cleanup that incorporate appropriate State law. That being said, EPA is open to looking at alternative methods that will clean up the Gulfco Site faster than the options that EPA and the PRP Group have explored.

The EPA is looking to resolve cleanup of the Gulfeo Site quickly. EPA eagerly awaits your alternative proposal in order to quickly wrap up discussions and begin cleaning up the Gulfeo Site. Given the amount of time EPA has discussed with you the cleanup of the Gulfeo Site, EPA believes it is reasonable to expect your proposal in the next couple of weeks so that we can discuss this matter in early April. Should you have any questions, don't hesitate to contact me.

Sincerely yours,



Samuel Coleman, P.E.

Director

Superfund Division

cc: Bill Mailey
Alan Daniels



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 24, 2005

James C. Morriss III
Thompson & Knight LLP
1900 San Jacinto Center
98 San Jacinto Boulevard
Austin, TX 78701-4081

RE: Gulfco Marine Maintenance Superfund Site in Freeport Texas

Dear Mr. Morriss:

Thank you for your letters of March 9 and 16, 2005, concerning the Gulfco Marine Maintenance Superfund Site (Gulfco Site). The Environmental Protection Agency (EPA) appreciates your written proposal outlining entering into an Administrative Order on Consent (AOC) with EPA to investigate and clean up the Gulfco Site. We look forward to working with you to assure that the Gulfco Site can be successfully remediated in a manner which protects human health and the environment and provides a basis for EPA to delist the site from the National Priorities List (NPL) upon completion of the response action.

In order to move forward in discussions regarding the proposed AOC for the Gulfco Site, we need additional information which will provide a more complete explanation of your proposal and the steps you are willing to perform to meet the needs EPA has identified. At the March 7, 2005, meeting, the Regional Administrator identified a number of requirements which must be addressed in any response action in order for EPA to assure that its responsibilities have been met and to allow delisting of the Gulfco Site from the NPL. In particular, he emphasized that any AOC must provide for the following:

- EPA oversight of the investigation and clean up;
- appropriate public participation;
- a mechanism to assure that all appropriate response actions are completed; and
- assurance that the response is consistent with other NPL actions.

Further, the Regional Administrator explained his concerns, and ours, that the Texas Voluntary Cleanup Program (Texas VCP) process, although useful in many cases, will not provide all of the assurances that EPA needs for the Gulfco Site.

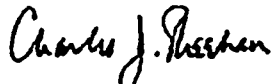
Our understanding from the meeting was that your group consisting of Dow, Sequa, and LDL Coastal (hereinafter referred to as "Potentially Responsible Parties [PRP] Group") agreed to explore entering into an AOC consisting of an investigation and cleanup under appropriate state law, but addressing the federal requirements identified by the Regional Administrator.

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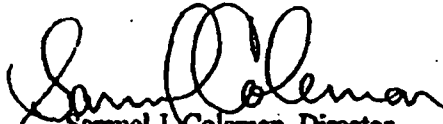
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We are committed to working with you to try to resolve remediation of the Gulfco Site quickly. In order to address these issues in the most efficient manner, we propose that a meeting be scheduled to discuss your proposal and the details of how you intend to address the requirements identified by the Regional Administrator. I have asked Barbara Nann, the Gulfco Site attorney, to contact you to schedule a meeting at the earliest point which our mutual schedules allow. If you have additional questions, she may be reached at 214-665-2157.

Sincerely yours,



Charles J. Sheehan
Regional Counsel (6RC)



Samuel J. Coleman, Director
Superfund Division (6SF)

cc: Bill Mailey
Alan Daniels
Lawrence E. Starfield